

**ENABLING STATUTE OF THE  
DEFENSE NUCLEAR FACILITIES SAFETY BOARD  
42 U.S.C. § 2286 et seq.**

**NATIONAL DEFENSE AUTHORIZATION  
ACT, FISCAL YEAR 1989  
(Pub. L. No. 100-456, September 29, 1988),**

**AS AMENDED BY NATIONAL DEFENSE  
AUTHORIZATION ACT, FISCAL YEAR 1991  
(Pub. L. No. 101-510, November 5, 1990),  
NATIONAL DEFENSE AUTHORIZATION ACT  
FISCAL YEARS 1992 AND 1993  
(Pub. L. No. 102-190, December 5, 1991),  
ENERGY POLICY ACT OF 1992  
(Pub. L. No. 102-486, October 24, 1992),  
NATIONAL DEFENSE AUTHORIZATION ACT  
FISCAL YEAR 1994  
(Pub. L. No. 103-160, November 30, 1993), AND  
FEDERAL REPORTS ELIMINATION ACT OF 1998  
(Pub. L. No. 105-362, November 10, 1998)**

**TITLE 42. THE PUBLIC HEALTH AND WELFARE**  
**CHAPTER 23. DEVELOPMENT AND CONTROL OF ATOMIC ENERGY**  
**SUBCHAPTER XVII.A. DEFENSE NUCLEAR**  
**FACILITIES SAFETY BOARD**  
**42 U.S.C. § 2286**

**§ 2286. Establishment of Defense Nuclear Facilities Safety Board** [Atomic Energy Act, Sec. 311]

**(a) Establishment.**

There is hereby established an independent establishment in the executive branch, to be known as the "Defense Nuclear Facilities Safety Board" (hereafter in this subchapter referred to as the "Board").

**(b) Membership.**

(1) The Board shall be composed of five members appointed from civilian life by the President, by and with the advice and consent of the Senate, from among United States citizens who are respected experts in the field of nuclear safety with a demonstrated competence and knowledge relevant to the independent investigative and oversight functions of the Board. Not more than three members of the Board shall be of the same political party.

(2) Any vacancy in the membership of the Board shall be filled in the same manner in which the original appointment was made.

(3) No member of the Board may be an employee of, or have any significant financial relationship with, the Department of Energy or any contractor of the Department of Energy.

(4) Not later than 180 days after September 29, 1988, the President shall submit to the Senate nominations for appointment to the Board. In the event that the President is unable to submit the nominations within such 180-day period, the President shall submit to the Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives a report describing the reasons for such inability and a plan for submitting the nominations within the next 90 days. If the President is unable to submit the nominations within that 90-day period, the President shall again submit to such committees and the Speaker such a report and plan. The President shall continue to submit to such committees and the Speaker such a report and plan every 90 days until the nominations are submitted.

**(c) Chairman and Vice Chairman.**

(1) The President shall designate a Chairman and Vice Chairman of the Board from among members of the Board.

(2) The Chairman shall be the chief executive officer of the Board and, subject to such policies as the Board may establish, shall exercise the functions of the Board with respect to—

- (A) the appointment and supervision of employees of the Board;
- (B) the organization of any administrative units established by the Board; and
- (C) the use and expenditure of funds.

(3) The Chairman may delegate any of the functions under this paragraph to any other member or to any appropriate officer of the Board.

(4) The Vice Chairman shall act as Chairman in the event of the absence or incapacity of the Chairman or in case of a vacancy in the office of Chairman.

**(d) Terms.**

(1) Except as provided under paragraph (2), the members of the Board shall serve for terms of five years. Members of the Board may be reappointed.

(2) Of the members first appointed--

- (A) one shall be appointed for a term of one year;
- (B) one shall be appointed for a term of two years;
- (C) one shall be appointed for a term of three years;
- (D) one shall be appointed for a term of four years; and
- (E) one shall be appointed for a term of five years, as designated by the President at the time of appointment.

(3) Any member appointed to fill a vacancy occurring before the expiration of the term of office for which such member's predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of that member's term until a successor has taken office.

**(e) Quorum.**

Three members of the Board shall constitute a quorum, but a lesser number may hold hearings.

**§ 2286a. Functions of the Board. [Atomic Energy Act, Sec. 312]**

**(a) In general.**

The Board shall perform the following functions:

**(1) Review and evaluation of standards.**

The Board shall review and evaluate the content and implementation of the standards relating to the design, construction, operation, and decommissioning of defense nuclear facilities of the Department of Energy (including all applicable Department of Energy orders, regulations, and requirements) at each Department of Energy defense nuclear facility. The Board shall recommend to

the Secretary of Energy those specific measures that should be adopted to ensure that public health and safety are adequately protected. The Board shall include in its recommendations necessary changes in the content and implementation of such standards, as well as matters on which additional data or additional research is needed.

**(2) Investigations.**

(A) The Board shall investigate any event or practice at a Department of Energy defense nuclear facility which the Board determines has adversely affected, or may adversely affect, public health and safety.

(B) The purpose of any Board investigation under subparagraph (A) shall be--

(i) to determine whether the Secretary of Energy is adequately implementing the standards described in paragraph (1) of the Department of Energy (including all applicable Department of Energy orders, regulations, and requirements) at the facility;

(ii) to ascertain information concerning the circumstances of such event or practice and its implications for such standards;

(iii) to determine whether such event or practice is related to other events or practices at other Department of Energy defense nuclear facilities; and

(iv) to provide to the Secretary of Energy such recommendations for changes in such standards or the implementation of such standards (including Department of Energy orders, regulations, and requirements) and such recommendations relating to data or research needs as may be prudent or necessary.

**(3) Analysis of design and operational data.**

The Board shall have access to and may systematically analyze design and operational data, including safety analysis reports, from any Department of Energy defense nuclear facility.

**(4) Review of facility design and construction.**

The Board shall review the design of a new Department of Energy defense nuclear facility before construction of such facility begins and shall recommend to the Secretary, within a reasonable time, such modifications of the design as the Board considers necessary to ensure adequate protection of public health and safety. During the construction of any such facility, the Board shall periodically review and monitor the construction and shall submit to the Secretary, within a reasonable time, such recommendations relating to the construction of that facility as the Board considers necessary to ensure adequate protection of public health and safety. An action of the Board, or a failure to act, under this paragraph may not delay or prevent the Secretary of Energy from carrying out the construction of such a facility.

## **(5) Recommendations.**

The Board shall make such recommendations to the Secretary of Energy with respect to Department of Energy defense nuclear facilities, including operations of such facilities, standards, and research needs, as the Board determines are necessary to ensure adequate protection of public health and safety. In making its recommendations the Board shall consider the technical and economic feasibility of implementing the recommended measures.

## **(b) Excluded functions.**

The functions of the Board under this subchapter do not include functions relating to the safety of atomic weapons. However, the Board shall have access to any information on atomic weapons that is within the Department of Energy and is necessary to carry out the functions of the Board.

## **§ 2286b. Powers of Board. [Atomic Energy Act, Sec. 313]**

### **(a) Hearings.**

(1) The Board or a member authorized by the Board may, for the purpose of carrying out this subchapter, hold such hearings and sit and act at such times and places, and require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such evidence as the Board or an authorized member may find advisable.

(2) (A) Subpoenas may be issued only under the signature of the Chairman or any member of the Board designated by him and shall be served by any person designated by the Chairman, any member, or any person as otherwise provided by law. The attendance of witnesses and the production of evidence may be required from any place in the United States at any designated place of hearing in the United States.

(B) Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

(C) If a person issued a subpoena under paragraph (1) refuses to obey such subpoena or is guilty of contumacy, any court of the United States within the judicial district within which the hearing is conducted or within the judicial district within which such person is found or resides or transacts business may (upon application by the Board) order such person to appear before the Board to produce evidence or to give testimony relating to the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt of the court.

(D) The subpoenas of the Board shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(E) All process of any court to which application may be made under this section may be served in the judicial district in which the person required to be served resides or may be found.

**(b) Staff.**

**(1)** The Board may, for the purpose of performing its responsibilities under this subchapter–

**(A)** hire such staff as it considers necessary to perform the functions of the Board, including such scientific and technical personnel as the Board may determine necessary, but not more than the equivalent of 150 full-time employees; and

**(B)** procure the temporary and intermittent services of experts and consultants to the extent authorized by section 3109(b) of title 5 [United States Code] at rates the Board determines to be reasonable.

**(2)** The authority and requirements provided in section 2201(d) of this title [§ 161 d. of the Atomic Energy Act] with respect to officers and employees of the Commission shall apply with respect to scientific and technical personnel hired under paragraph (1)(A).

**(c) Regulations.**

The Board may prescribe regulations to carry out the responsibilities of the Board under this subchapter.

**(d) Reporting requirements.**

The Board may establish reporting requirements for the Secretary of Energy which shall be binding upon the Secretary. The information which the Board may require the Secretary of Energy to report under this subsection may include any information designated as classified information, or any information designated as safeguards information and protected from disclosure under section 2167 or 2168 of this title [§ 147 or 148 of the Atomic Energy Act].

**(e) Use of Government facilities, etc.**

The Board may, for the purpose of carrying out its responsibilities under this subchapter, use any facility, contractor, or employee of any other department or agency of the Federal Government with the consent of and under appropriate support arrangements with the head of such department or agency and, in the case of a contractor, with the consent of the contractor.

**(f) Assistance from certain agencies of the Federal Government.**

With the consent of and under appropriate support arrangements with the Nuclear Regulatory Commission, the Board may obtain the advice and recommendations of the staff of the Commission on matters relating to the Board's responsibilities and may obtain the advice and recommendations of the Advisory Committee on Reactor Safeguards on such matters.

**(g) Assistance from organizations outside the Federal Government.**

Notwithstanding any other provision of law relating to the use of competitive procedures, the Board may enter into an agreement with the National Research Council of the National Academy of Sciences or any other appropriate group or organization of experts outside the Federal Government chosen by the Board to assist the Board in carrying out its responsibilities under this subchapter.

**(h) Resident inspectors.**

The Board may assign staff to be stationed at any Department of Energy defense nuclear facility to carry out the functions of the Board.

**(i) Special studies.**

The Board may conduct special studies pertaining to adequate protection of public health and safety at any Department of Energy defense nuclear facility.

**(j) Evaluation of information.**

The Board may evaluate information received from the scientific and industrial communities, and from the interested public, with respect to--

(1) events or practices at any Department of Energy defense nuclear facility; or

(2) suggestions for specific measures to improve the content of standards described in section 2286a(1) of this title [§ 312(1) of the Atomic Energy Act], the implementation of such standards, or research relating to such standards at Department of Energy defense nuclear facilities.

**§ 2286c. Responsibilities of the Secretary of Energy. [Atomic Energy Act, Sec. 314]**

**(a) Cooperation.**

The Secretary of Energy shall fully cooperate with the Board and provide the Board with ready access to such facilities, personnel, and information as the Board considers necessary to carry out its responsibilities under this subchapter. Each contractor operating a Department of Energy defense nuclear facility under a contract awarded by the Secretary shall, to the extent provided in such contract or otherwise with the contractor's consent, fully cooperate with the Board and provide the Board with ready access to such facilities, personnel, and information of the contractor as the Board considers necessary to carry out its responsibilities under this subchapter.

**(b) Access to information.**

The Secretary of Energy may deny access to information provided to the Board to any person who--

(1) has not been granted an appropriate security clearance or access authorization by the Secretary of Energy; or

(2) does not need such access in connection with the duties of such person.

**§ 2286d. Board Recommendations.** [Atomic Energy Act, Sec. 315]

**(a) Public availability and comment.**

Subject to subsections (g) and (h) and after receipt by the Secretary of Energy of any recommendations from the Board under section 2286a of this title [§ 312 of the Atomic Energy Act], the Board promptly shall make such recommendations available to the public in the Department of Energy's regional public reading rooms and shall publish in the Federal Register such recommendations and a request for the submission to the Board of public comments on such recommendations. Interested persons shall have 30 days after the date of the publication of such notice in which to submit comments, data, views, or arguments to the Board concerning the recommendations.

**(b) Response by Secretary.**

(1) The Secretary of Energy shall transmit to the Board, in writing, a statement on whether the Secretary accepts or rejects, in whole or in part, the recommendations submitted to him by the Board under section 2286a of this title [§ 312 of the Atomic Energy Act], a description of the actions to be taken in response to the recommendations, and his views on such recommendations. The Secretary of Energy shall transmit his response to the Board within 45 days after the date of the publication, under subsection (a), of the notice with respect to such recommendations or within such additional period, not to exceed 45 days, as the Board may grant.

(2) At the same time as the Secretary of Energy transmits his response to the Board under paragraph (1), the Secretary, subject to subsection (h), shall publish such response, together with a request for public comment on his response, in the Federal Register.

(3) Interested persons shall have 30 days after the date of the publication of the Secretary of Energy's response in which to submit comments, data, views, or arguments to the Board concerning the Secretary's response.

(4) The Board may hold hearings for the purpose of obtaining public comments on its recommendations and the Secretary of Energy's response.

**(c) Provision of information to Secretary.**

The Board shall furnish the Secretary of Energy with copies of all comments, data, views, and arguments submitted to it under subsection (a) or (b) of this section.



**(d) Final decision.**

If the Secretary of Energy, in a response under subsection (b)(1), rejects (in whole or part) any recommendation made by the Board under section 2286a of this title [§ 312 of the Atomic Energy Act], the Board shall either reaffirm its original recommendation or make a revised recommendation and shall notify the Secretary of its action. Within 30 days after receiving the notice of the Board's action under this subsection, the Secretary shall consider the Board's action and make a final decision on whether to implement all or part of the Board's recommendations. Subject to subsection (h), the Secretary shall publish the final decision and the reasoning for such decision in the Federal Register and shall transmit to the Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives a written report containing that decision and reasoning.

**(e) Implementation plan.**

The Secretary of Energy shall prepare a plan for the implementation of each Board recommendation, or part of a recommendation, that is accepted by the Secretary in his final decision. The Secretary shall transmit the implementation plan to the Board within 90 days after the date of the publication of the Secretary's final decision on such recommendation in the Federal Register. The Secretary may have an additional 45 days to transmit the plan if the Secretary submits to the Board and to the Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives a notification setting forth the reasons for the delay and describing the actions the Secretary is taking to prepare an implementation plan under this subsection. The Secretary may implement any such recommendation (or part of any such recommendation) before, on, or after the date on which the Secretary transmits the implementation plan to the Board under this subsection.

**(f) Implementation.**

(1) Subject to paragraph (2), not later than one year after the date on which the Secretary of Energy transmits an implementation plan with respect to a recommendation (or part thereof) under subsection (e), the Secretary shall carry out and complete the implementation plan. If complete implementation of the plan takes more than 1 year, the Secretary of Energy shall submit a report to the Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives setting forth the reasons for the delay and when implementation will be completed.

(2) If the Secretary of Energy determines that the implementation of a Board recommendation (or part thereof) is impracticable because of budgetary considerations, or that the implementation would affect the Secretary's ability to meet the annual nuclear weapons stockpile requirements established pursuant to section 2121 of this title [§ 91 of the Atomic Energy Act], the Secretary shall submit to the President, to the Committees on Armed Services and on Appropriations of the Senate, and to the Speaker of the House of Representatives a report containing the recommendation and the Secretary's determination.

**(g) Imminent or severe threat.**

(1) In any case in which the Board determines that a recommendation submitted to the Secretary of Energy under section 2286a of this title [§ 312 of the Atomic Energy Act] relates to an imminent or severe threat to public health and safety, the Board and the Secretary of Energy shall proceed under this subsection in lieu of subsections (a) through (d) of this section.

(2) At the same time that the Board transmits a recommendation relating to an imminent or severe threat to the Secretary of Energy, the Board shall also transmit the recommendation to the President and for information purposes to the Secretary of Defense. The Secretary of Energy shall submit his recommendation to the President. The President shall review the Secretary of Energy's recommendation and shall make the decision concerning acceptance or rejection of the Board's recommendation.

(3) After receipt by the President of the recommendation from the Board under this subsection, the Board promptly shall make such recommendation available to the public and shall transmit such recommendation to the Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives. The President shall promptly notify such committees and the Speaker of his decision and the reasons for that decision.

**(h) Limitation.**

Notwithstanding any other provision of this section, the requirements to make information available to the public under this section--

(1) shall not apply in the case of information that is classified; and

(2) shall be subject to the orders and regulations issued by the Secretary of Energy under sections 2167 and 2168 of this title [§§ 147 and 148 of the Atomic Energy Act] to prohibit dissemination of certain information.

**§ 2286e. Reports. [Atomic Energy Act, Sec. 316]**

**(a) Board report.**

(1) The Board shall submit to the Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives each year, at the same time that the President submits the budget to Congress pursuant to section 1105(a) of Title 31 [United States Code], a written report concerning its activities under this subchapter, including all recommendations made by the Board, during the year preceding the year in which the report is submitted. The Board may also issue periodic unclassified reports on matters within the Board's responsibilities.

(2) The annual report under paragraph (1) shall include an assessment of--

(A) the improvements in the safety of Department of Energy defense nuclear facilities during the period covered by the report:

(B) the improvements in the safety of Department of Energy defense nuclear facilities resulting from actions taken by the Board or taken on the basis of the activities of the Board; and

(C) the outstanding safety problems, if any, of Department of Energy defense nuclear facilities.

**(b) DOE report.**

The Secretary of Energy shall submit to the Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives each year, at the same time that the President submits the budget to Congress pursuant to section 1105(a) of Title 31 [United States Code], a written report concerning the activities of the Department of Energy under this subchapter during the year preceding the year in which the report is submitted.

**(c) Requirements for first annual report.**

(1) Before submission of the first annual report by the Defense Nuclear Facilities Safety Board under section 316(a) of the Atomic Energy Act of 1954 (as added by subsection (a)), the Board shall conduct a study on whether nuclear facilities of the Department of Energy that are excluded from the definition of "Department of Energy defense nuclear facility" in section 318(1)(C) of such Act (hereafter in this subsection referred to as "non-defense nuclear facilities") should be subject to independent external oversight. The Board shall include in such first annual report the results of such study and the recommendation of the Board on whether non-defense nuclear facilities should be subject to independent external oversight.

(2) If the Board recommends in the report that non-defense nuclear facilities should be subject to such oversight, the report shall include a discussion of alternative mechanisms for implementing such oversight, including mechanisms such as a separate executive agency and oversight as a part of the Board's responsibilities. The discussion of alternative mechanisms of oversight also shall include considerations of budgetary costs, protection of the security of sensitive nuclear weapons information, and the similarities and differences in the design, construction, operation, and decommissioning of defense and non-defense nuclear facilities of the Department of Energy.

**(d) Requirements for fifth annual report.**

The fifth annual report submitted by the Defense Nuclear Facilities Safety Board under section 316(a) of the Atomic Energy Act of 1954 (as added by subsection (a)) shall include—

(1) an assessment of the degree to which the overall administration of the Board's activities are believed to meet the objectives of Congress in establishing the Board;

(2) recommendations for continuation, termination, or modification of the Board's functions and programs, including recommendations for transition to some other independent oversight arrangement if it is advisable; and

(3) recommendations for appropriate transition requirements in the event that modifications are recommended.

**§ 2286f. Judicial Review.** [Atomic Energy Act, Sec. 317]

Chapter 7 of Title 5 [5 U.S.C. §§ 701 et seq.] shall apply to the activities of the Board under this subchapter.

**§ 2286g. “Department of Energy Defense Nuclear Facility” Defined.** [Atomic Energy Act, Sec. 318]

As used in this subchapter, the term "Department of Energy defense nuclear facility" means any of the following:

(1) A production facility or utilization facility (as defined in section 2014 of this title [§ 11 of the Atomic Energy Act]) that is under the control or jurisdiction of the Secretary of Energy and that is operated for national security purposes, but the term does not include--

(A) any facility or activity covered by Executive Order No. 12344, dated February 1, 1982 [42 U.S.C. § 7158 note], pertaining to the Naval nuclear propulsion program;

(B) any facility or activity involved with the transportation of nuclear explosives or nuclear material;

(C) any facility that does not conduct atomic energy defense activities; or

(D) any facility owned by the United States Enrichment Corporation.

(2) A nuclear waste storage facility under the control or jurisdiction of the Secretary of Energy, but the term does not include a facility developed pursuant to the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) and licensed by the Nuclear Regulatory Commission.

**§ 2286h. Contract Authority Subject to Appropriations.** [Atomic Energy Act, Sec. 319]

The authority of the Board to enter into contracts under this subchapter is effective only to the extent that appropriations (including transfers of appropriations) are provided in advance for such purpose.

**§ 2286h-1. Transmittal of Certain Information to Congress.** [Atomic Energy Act, Sec. 320]

Whenever the Board submits or transmits to the President or the Director of the Office of Management and Budget any legislative recommendation, or any statement or information in

preparation of a report to be submitted to the Congress pursuant to section 2286e(a) of this title [§ 316(a) of the Atomic Energy Act], the Board shall submit at the same time a copy thereof to the Congress.

**§ 2286i. Annual Authorization of Appropriations.** [Atomic Energy Act, Sec. 321]

Authorizations of appropriations for the Board for fiscal years beginning after fiscal year 1989 shall be provided annually in authorization Acts.

**RELATED LEGISLATIVE PROVISION**

**§ 3133 of Public Law 102-190, 105 Stat. 1574-75, as amended by § 410 of Public Law 105-362, 112 Stat. 3280:**

**§ 3133. RESUMPTION OF PLUTONIUM OPERATIONS IN BUILDINGS AT ROCKY FLATS.**

**(a) RESUMPTION OF PLUTONIUM OPERATIONS.**

The Secretary of Energy may not resume plutonium operations in a plutonium operations building at the Rocky Flats Plant, Golden, Colorado, until the Defense Nuclear Facilities Safety Board determines, to the satisfaction of the Board, that the Secretary's response to the Board's recommendations numbered 90-2, 90-5, and 91-1 adequately protects public health and safety with respect to the operation of such building.

**(b) RESUMPTION OF PRODUCTION OF PLUTONIUM WARHEAD COMPONENTS.**

The production of plutonium warhead components for any particular type of warhead may not be resumed at the Rocky Flats Plant until the later of—

(1) April 1, 1992; or

(2) 30 days after the date on which the Secretary of Defense and the Secretary of Energy certify to Congress that the production of that type of warhead is necessary in the interest of the national security of the United States.

**(c) DEFINITION.**

For purposes of this section, the term "plutonium operations building" means the building numbered 371, 559, 707, 771, 776, 777, or 779 at the Rocky Flats Nuclear Weapons Plant, Golden, Colorado, or any other building at such Plant in which plutonium operations are conducted.